

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

PROGRESSIVE CASUALTY INSURANCE
COMPANY,

Plaintiff,

vs.

BAM PRODUCE, INC., MANUEL OSVALDO
NUNEZ, JR., MTLR CORP., and RON
COUCHMAN,

Defendants.

Civil Action No. 1:17-CV-00289-AKH

ANSWER

Defendant, MTLR CORP. (“MTLR”) by its attorneys MOLOD, SPITZ & DESANTIS, P.C. for its answer to the Plaintiff’s Complaint, alleges the following:

FIRST. That Defendant MTLR denies knowledge or information sufficient to form a belief as to the allegations set forth in paragraphs “1”, “2”, “3”, “5”, “6”, “7”, “9”, “10”, “11”, “12”, “13”, “14”, “15”, “16”, “17”, “18” and “19” of the Complaint.

SECOND. That Defendant MTLR admits the allegations of paragraph “4” of the Complaint in so far as said paragraph alleges that MTLR is a New York Business Corporation doing business in the State of New York.

THIRD. That Defendant MTLR denies knowledge or information sufficient to form a belief as to the allegations of paragraph “8” of the Complaint and, further, respectfully refers the aforesaid allegations therein regarding “diversity jurisdiction pursuant to 28 U.S.C. §1332” and regarding “jurisdiction to

render declaratory judgment pursuant to 28 U.S.C. §2201” as matters of law to be determined by this Honorable Court.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

That Plaintiff has failed to state a cause of action upon which relief can be granted.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

That Plaintiff has failed to join necessary parties.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

That the action is premature.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

That the Plaintiff has waived its rights to seek a declaratory judgment against the answering defendant.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

That the Plaintiff knew or should have known that the subject vehicle was to be insured by the Plaintiff, and should have been insured by the Plaintiff for the subject loss.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

That other parties and persons are responsible for the Plaintiff’s claims herein over and above any responsibility of this Answering Defendant, either in whole or in part.

**AS AND FOR A CROSS-CLAIM AGAINST
BAM PRODUCE, INC., MANUEL OSVALDO NUNEZ, JR. and RON COUCHMAN**

That if Plaintiff should recover judgment against this Answering Defendant, then Co-Defendants, above-named, shall be liable to said Answering

Defendant for the full amount of said Judgment, or on the basis of contractual indemnification, and the Answering Defendant is entitled to indemnification from and judgment over and against the Co-Defendants, above named, for part of any verdict or judgment which Plaintiff may recover in such amounts as a jury or Court may direct.

That if Plaintiff should recover judgment against this Answering Defendant, then Co-Defendants, above-named, shall be liable to said Answering Defendant for the full amount of said Judgment, or on the basis of common law indemnification, and the Answering Defendant is entitled to indemnification from and judgment over and against the Co-Defendants, above named, for part of any verdict or judgment which Plaintiff may recover in such amounts as a jury or Court may direct.

WHEREFORE, the Answering Defendant, MTLR CORP., demands judgment dismissing the Complaint against it, and further demands judgment over and against the Co-Defendants, BAM PRODUCE, INC., MANUEL OSVALDO NUNEZ, JR. and RON COUCHMAN, for any judgment obtained against this Answering Defendant by Plaintiff, or on the basis of apportionment, in such amounts as a jury or Court may direct, together with the costs, disbursements and expense of this action.

Dated: New York, NY
June 21, 2017

Yours, etc.



Andrew Small, Esq. (AS-1294)
MOLOD, SPITZ & DeSANTIS, P.C.
Attorneys for Defendant
MTLR CORP

Office and PO Address:

1430 Broadway

New York, NY 10018

Tel. 212.869.3200

Fax 212.869.4242

Email: Asmall@molodspitz.com

Our file no. SP 4599